



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF R-M-T-

DATE: MAR. 30, 2018

APPEAL NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a special education teacher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After the petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and argues that she is eligible for a national interest waiver as a member of the professions holding an advanced degree.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definition:

*Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

While neither the statute nor the pertinent regulations define the term “national interest,” we recently set forth a new framework for adjudicating national interest waiver petitions. *See Dhanasar*, 26 I&N Dec. 884.<sup>1</sup> *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

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<sup>1</sup> In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.<sup>2</sup>

## II. ANALYSIS

### A. Member of the Professions Holding an Advanced Degree

The Director concluded that the Petitioner qualifies as both a member of the professions holding an advanced degree and as an alien of exceptional ability. The record includes a copy of her diploma from [REDACTED] in [REDACTED] Missouri, evidencing that, in 2012, she earned a Master of Arts in Education: Teaching & Learning. Thus, the record supports the Director's conclusion that the Petitioner qualifies as a member of the professions holding an advanced degree demonstrating qualification for the underlying EB-2 visa classification. Accordingly, we need not analyze her eligibility as an alien of exceptional ability.

### B. Eligibility under the *Dhanasar* framework

The Petitioner proposes to continue her work as a special education and mathematics teacher at [REDACTED] in [REDACTED] Missouri. She indicates that she provides special education support to sixth grade students in four content areas including math, communication, science, and social studies.<sup>3</sup> She previously taught at [REDACTED] in [REDACTED] Missouri. She also states that she intends to assume a district curriculum leadership role "responsible for the school or district's instructional materials including the evaluation and development of educational programs, textbooks, classroom technology, and teacher professional development." Finally, she explains that she intends to conduct research in special education focusing on the deficits of students receiving special education services in the area of mathematics.

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<sup>2</sup> See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

<sup>3</sup> As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we consider information about her position with [REDACTED] to illustrate the capacity in which she intends to work.

The Petitioner contends that her training allows her to facilitate special education instruction “in order to provide children with exceptionalities with the same opportunities as other children for a meaningful, purposeful, and fulfilling life,” and that her work will “promote student achievement and prepare them for global competitiveness by raising educational distinction, excellence, and ensuring equal access to education.” The record includes letters of support and published articles discussing the benefits of her proposed areas of research and documenting the importance of special education in the United States. Accordingly, we find that the Petitioner’s proposed work has substantial merit.

With respect to the national importance of the Petitioner’s proposed endeavor, we consider evidence documenting the “potential prospective impact” of her work. Throughout the record, the Petitioner reiterates that she intends to continue her work as special education classroom teacher and that her work teaching special education students offers benefits in the field of education. She explains that her work is “necessary to provide adequate interventions and support to such individuals ensuring that they acquire an education like other persons with average abilities.” She references federally-funded statutes such as the Individual Disabilities Educational Act, and the Family Education and Privacy Rights Act which provide for early intervention and special education services for identified students.<sup>4</sup>

In addition, [REDACTED] associate professor at [REDACTED] notes that “the overall outcomes of students with learning disabilities related to mathematics achievement is dismal and likely to continue to be deficient until educators like [the Petitioner] who has content expertise in mathematics begin to focus on students with special education needs.” He notes that her work “may lead to potential creation of jobs by assisting the ability of students with disabilities to reach their full academic potential and advance the work and priority of the U.S. to educate and prepare all students to be college and career ready.”

The Petitioner’s evidence, however, is not sufficient to demonstrate that her proposed teaching endeavor is of national importance. While we acknowledge the merits of the Petitioner’s work to improve the educational experience of her students, the evidence does not demonstrate that her instructional activities offer benefits that extend beyond her school or district to impact the field of special education more broadly.<sup>5</sup> As the Petitioner has not demonstrated that these proposed activities satisfy the “national importance” element of the *Dhanasar* framework’s first prong, we will limit the remainder of our analysis to her proposed research.

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<sup>4</sup> We note that the relevant question is not whether the *field* of intended work has national importance; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” *Id.* at 889. For instance, in *Dhanasar*, although we acknowledged the merit of “STEM” teaching in relation to U.S. educational interests, we found the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

<sup>5</sup> In *Dhanasar*, we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *Id.* at 893.

To the extent that the Petitioner proposes to conduct special education research, we find the evidence sufficient to demonstrate that such research is of national importance. The Petitioner submits articles from the Department of Education and several peer-reviewed journals describing the need for special education research. Thus, the record shows that research in this area stands to have broader implications beyond any one company or organization, whether through the development of special education practices and techniques or through research for dissemination to others in the field through professional journals and conferences. As the Petitioner has documented both the substantial merit and national importance of her proposed research, she meets the first prong of the *Dhanasar* framework.

With respect to the second prong of the *Dhanasar* analysis, however, the Petitioner has not demonstrated a record of success or progress, or a degree of interest in her work from relevant parties, rising to the level of rendering her well positioned to advance her proposed research work. *See Dhanasar*, 26 I&N Dec. at 890. The record includes a copy of the Petitioner's résumé, professional memberships, training credentials, and documentation of her attendance at continuing education seminars.

The Petitioner presented evidence that, in 2016, she published four journal articles that discuss special education practices.<sup>6</sup> The record does not, however, include evidence that this work constitutes a record of success or otherwise renders her well positioned to advance her proposed research. For instance, the Petitioner has not presented sufficient documentation to illustrate the significance of her written work, or to establish that her research has been implemented, utilized, or applauded by those viewing it.

On appeal, the Petitioner provides several letters discussing the importance of her research in the field of special education. For example, [REDACTED] letter notes that the Petitioner's work is "very important, timely, and addresses an under developed area in our field." He comments that her work "has provided profound understanding of the dynamics of mathematics in the field of special education" and that her contributions have been "widely appreciated and highly regarded." Similarly, [REDACTED] assistant professor at [REDACTED] notes that the Petitioner "is exceptionally trained in several interdisciplinary fields of special education that make her a uniquely strong researcher in special education and mathematics." She writes that she was "impressed" with the Petitioner's research relating to mathematics interventions for students from disadvantaged backgrounds. [REDACTED] associate professor of school psychology at the [REDACTED] states that the Petitioner's work "is helping advance the field's understanding of how best to teach mathematics and her current role as a special education teacher is critical to support he implementation of best practices in mathematics for students with disabilities." He does not explain the nature of her contribution or offer sufficient detail regarding the study explaining how her work renders her well positioned to advance the proposed endeavor.

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<sup>6</sup> Although the Petitioner has stated that the publications in which her work appeared are high impact peer-reviewed journals, the record does not include evidence to support that assertion. In addition, we note that two of the submitted articles include identical abstracts and several sections of text in common.

In sum, while these and other letters attest that the Petitioner is respected by her peers, the authors do not sufficiently explain how her work has been influential among special education teachers, has served as an impetus for progress or generated positive discourse in the field, or otherwise represents a record of success or progress rendering her well positioned to advance her proposed research.

Further, the Petitioner has not offered a model or plan for her future research activities.<sup>7</sup> She has generally stated that, in addition to her teaching duties, she will conduct research and publish additional research papers. However, the Petitioner has not explained the capacity in which she will do so, demonstrated the interest of relevant entities or individuals in funding her proposed work, or otherwise shown how she proposes to conduct her research. For all of the reasons discussed, the record does not sufficiently demonstrate that the Petitioner is well positioned to advance her proposed research endeavor.

Finally, with regard to the third prong of the *Dhanasar* analysis, the Petitioner has not established that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. On appeal, she addresses the third prong of the *Dhanasar* framework with respect to her proposed teaching activities, and also states that “the issue of finding and keeping best-qualified researchers [in this area] far outweighs the need for labor certification.” She does not, however, provide adequate evidence that on balance, her proposed research work necessitates a waiver of the requirements of a job offer and a labor certification. She has not, for instance, provided sufficient information or evidence outlining why a labor certification would be impractical in her case: whether the United States would benefit from her research contributions even if other U.S. workers are also available; or whether urgency warrants foregoing the labor certification process.<sup>8</sup>

### III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, she has not established that she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-M-T-*, ID# 1087384 (AAO Mar. 30, 2018)

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<sup>7</sup> See *Dhanasar*, 26 I&N Dec. at 890.

<sup>8</sup> We note that because the Petitioner has not established that she is well positioned to advance her proposed research endeavor(s) as required by the second prong of the *Dhanasar* framework, she is not eligible for a national interest waiver and further detailed discussion of the balancing factors under the third prong would serve no meaningful purpose.